

**N Ramakrishnan a/l P Nagasamy v Timbalan Menteri
Keselamatan Dalam Negeri, Malaysia & Ors** A

HIGH COURT (SHAH ALAM) — CRIMINAL APPLICATION NO
44–84 OF 2007 B
NALLINI PATHMANATHAN JC
13 NOVEMBER 2007

*Criminal Procedure — Habeas corpus — Preventive detention — Breach of
mandatory statutory procedural requirement — Whether such breach would
vitiate detention order — Whether relevant that no real prejudice was caused to
detainee* C

*Preventive Detention — Detention order — Detention under Dangerous Drugs
(Special Preventive Measures) Act 1985 — Service of Form I by police officer
serving detention order — Acknowledgment of service signed by detainee in
detention order confirming service of Form I by police officer — Subsequent
service of Form I by officer in charge of detention centre — Whether prima facie
evidence of service of Form I by acknowledgment of service displaced by subsequent
service at detention centre — Whether doubtful service of Form I effected by police
officer — Whether r 3(1) of Dangerous Drugs (Special Preventive Measures)
(Advisory Board Procedure) Rules 1987 breached — Whether such breach a
breach of a mandatory procedural requirement — Whether such breach would
vitiate detention order* D
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*Preventive Detention — Detention order — Detention under Dangerous Drugs
(Special Preventive Measures) Act 1985 — Whether date of Minister's
'satisfaction' is date of detention order — Whether Minister required to set out or
specify date when he is 'satisfied'* G

The applicant was detained pursuant to a detention order dated 6 August
2006 issued by the Minister under s 6 of the Dangerous Drugs (Special
Preventive Measures) Act 1985 ('the Act'). The detainee sought an order of
habeas corpus on the grounds that certain procedural requirements had been
breached which entitled him to be freed. Firstly, the applicant claimed that
that there had been a breach of r 3(1) of the Dangerous Drugs (Special
Preventive Measures) (Advisory Board Procedure) Rules 1987 ('the Rules') in
that there was doubt created as to whether the applicant was provided at the
time of the service of the detention order, with copies of Form I by the police H
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A officer serving the detention order — one Amiruddin. Amiruddin affirmed, by affidavit, that he served the detention order, the grounds and facts on which the detention order was based ('the grounds'), as well as Form I on the applicant on 6 August 2006. Amiruddin's affidavit exhibited both the detention order and the grounds. Page 2 of the detention order contained an
B acknowledgement of service in standard form print acknowledging service of the detention order, the grounds and three copies of Form I. The signatures of Amiruddin, the translator, one other police officer and the applicant were evident on the acknowledgement of service portion. However, Form I was
C not exhibited in Amiruddin's affidavit. One Nik Mohamad Faidza, the Officer in Charge of the Detention Centre affirmed an affidavit stating that he served three copies of Form I on the applicant when the applicant was brought to the detention centre. A copy of the Form I was exhibited to the affidavit of the Secretary to the Advisory Board clearly showing that it was
D served on the applicant at the detention centre. Secondly, the applicant contended that the Minister had failed to specify the 'date of his satisfaction' in respect of the reports from the police officer investigating the matter and the Inquiry Officer.

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Held, allowing the application:

- (1) The effect of the acknowledgement of service of three copies of Form I contained in the detention order was somewhat weakened by the fact that it was in standard pre-printed form in the detention order. While such an acknowledgement would normally suffice, in the instant case, its prima facie effect of regular service in compliance with r 3 was displaced by the unexplained subsequent and full service of three sets of Form I by the officer in charge of the detention centre, coupled with the absence of any other exhibit showing the actual service of Form I by the police officer — Amiruddin — serving the detention order or an explanation by the two deponents as to whether and if so, why Form I was served twice in this case (see para 14).
- (2) Upon a consideration of the entirety of the evidence before the court, it was not entirely without doubt whether the police officer Amiruddin did in fact serve three copies of Form I on the applicant together with the detention order and grounds on 6 August 2006. In view of this doubt, it could not be stated with any degree of certainty that there had been full compliance with r 3(1) of the Rules. A lack of compliance with r 3 denotes non-compliance with a mandatory procedural requirement, which in turn has the effect of vitiating the order for detention even if no real prejudice has ensued to the detainee (see para 15); *Puvaneswaran*

v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1991] 3 MLJ 28 and *Aw Ngoh Leang v Inspector General of Police & Ors* [1993] 1 MLJ 65 followed.

- (3) The court would adopt wholly the decision and grounds in *Lim Siong v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* in the instant case. The date of 'satisfaction' of the Minister is the date of issuance of the detention order. Therefore, there is no requirement that the Minister set out or specify the date when he is 'satisfied' because it is the date of the detention order. It would therefore follow that in the instant case there was a gap of some four days between the day when the Minister received the report from the inquiry officer on 2 August 2006 and the issuance of the order on 6 August 2006. There is no requirement that the Minister must make his decision on whether or not to exercise his discretion immediately upon receiving the relevant reports. That would attract the criticism of failing to give any or any adequate consideration to the reports which a crucial part of the basis for his decision. In this regard, there was no breach of s 6(1) of the Act (see paras 24 & 26–27).

[Bahasa Malaysia summary]

Pemohon telah ditahan menurut perintah tahanan bertarikh 6 Ogos 2006 yang dikeluarkan oleh Menteri di bawah s 6 Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta'). Orang tahanan itu telah memohon perintah habeas corpus atas alasan bahawa keperluan prosedur tertentu telah dilanggar yang memberikannya hak untuk dibebaskan. Pertama, pemohon mendakwa bahawa terdapat pelanggaran k 3(1) Kaedah-Kaedah Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) (Prosedur Lembaga Penasihat) 1987 ('Kaedah') di mana terdapat keraguan yang terbentuk berhubung sama ada pemohon diberikan salinan Borang I oleh pegawai polis yang menyerahkan perintah tahanan itu — Amiruddin pada masa serahan perintah tahanan itu. Amiruddin telah mengesahkan melalui affidavit bahawa dia telah menyerahkan perintah tahanan itu, alasan-alasan dan fakta-fakta yang mana menjadi asas perintah tahanan ('alasan-alasan tersebut'), dan juga Borang I ke atas pemohon pada 6 Ogos 2006. Affidavit Amiruddin mengekshibitkan kedua-dua perintah tahanan dan alasan-alasan tersebut. Mukasurat 2 perintah tahanan mengandungi pengakuan penyerahan dalam bentuk standard cetak mengakui penyerahan perintah tahanan, alasan-alasan tersebut dan tiga salinan Borang I. Tandatangan-tandatangan Amiruddin, penterjemah, salah seorang pegawai polis dan pemohon jelas tertera di bahagian pengesahan penyerahan itu. Walau bagaimanapun, Borang I tidak diekshibitkan dalam affidavit Amiruddin. Nik Mohamad Faidza, pegawai bertugas pusat tahanan yang telah mengikrarkan affidavit yang menyatakan bahawa beliau telah

- A menyampaikan tiga salinan Borang I kepada pemohon apabila pemohon dibawa ke pusat tahanan. Sesalinan Borang I telah diekshibitkan kepada afidavit Setiausaha Lembaga Penasihat dengan jelasnya menunjukkan bahawa ianya telah disampaikan kepada pemohon di pusat tahanan. Keduanya, pemohon menegaskan bahawa Menteri telah gagal untuk menyatakan 'tarikh penyelesaiannya' berkaitan dengan laporan daripada pegawai polis yang menyiasat perkara tersebut dan pegawai siasatan.
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- C **Diputuskan**, membenarkan permohonan:
- (1) Kesan pengakuan penerimaan penyampaian tiga salinan Borang I yang mengandungi perintah tahanan adalah agak lemah dengan fakta bahawa ianya adalah borang pra cetakan yang standard dalam perintah tahanan. Sementara pengakuan tersebut kebiasaannya memadai, dalam kes ini, ianya adalah kesan prima facie penyampaian yang biasa dalam memenuhi k 3 telah berubah melalui penyampaian penuh selanjutnya yang tidak dijelaskan tiga set Borang I oleh pegawai bertugas pusat tahanan, yang digandingkan dengan ketiadaan mana-mana ekshibit lain yang menunjukkan penyampaian sebenar Borang I oleh pegawai polis — Amiruddin — yang menyampaikan perintah tahanan atau penjelasan oleh dua deponen berkenaan dengan sama ada dan jika benar, mengapa Borang I telah disampaikan dua kali dalam kes ini (lihat perenggan 14).
- (2) Selepas dipertimbangkan keseluruhan keterangan di hadapan mahkamah, ianya tidak secara keseluruhan tanpa sangsi sama ada pegawai polis Amiruddin sebenarnya menyampaikan tiga salinan Borang I terhadap pemohon bersama-sama dengan perintah tahanan dan alasan pada 6 Ogos 2006. Berpendapat di atas kesangsian ini, ianya tidak boleh dinyatakan atas mana-mana tahap keyakinan bahawa terdapat pematuhan penuh dengan k 3(1) Kaedah tersebut. Kurangnya pematuhan dengan k 3 menunjukkan ketidakpatuhan dengan keperluan prosedur yang mandatori, yang mana memberi kesan kerosakan perintah tahanan tersebut walaupun jika ketiadaan prejudis yang sebenar yang berikutan kepada tahanan (lihat perenggan 15; *Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1991] 3 MLJ 28 dan *Aw Ngoh Leang v Inspector General of Police & Ors* [1993] 1 MLJ 65 diikuti).
- (3) Mahkamah akan menggunakan keseluruhan keputusan dan alasan di dalam kes *Lim Siong v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* kepada kes ini. Tarikh 'penyelesaian' Menteri adalah tarikh pengeluaran perintah tahanan tersebut. Oleh itu, adalah tidak perlu Menteri menyatakan atau menentukan tarikh bila beliau 'selesai' kerana ianya adalah tarikh perintah tahanan. Oleh itu ianya mengikuti

bahawa dalam kes ini terdapat jurang kira-kira empat hari di antara hari Menteri menerima laporan daripada pegawai siasatan pada 2 Ogos 2006 dan pengeluaran perintah pada 6 Ogos 2006. Tidak terdapat keperluan bahawa Menteri mesti membuat keputusannya sama ada boleh atau tidak melaksanakan budi bicaranya dengan segera apabila menerima laporan yang relevan. Ianya akan menarik kritikan berkenaan dengan kegagalan memberikan pertimbangan yang sewajarnya kepada laporan yang mana adalah bahagian penting asas keputusannya. Berkenaan dengan ini, tidak terdapat pelanggaran s 6(1) Akta tersebut (lihat perenggan 24 & 26–27.)

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Notes

For cases on detention under Dangerous Drugs (Special Preventive Measures) Act 1985, see 10 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 1360–1365. For cases on preventive detention, see 5(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2080–2101.

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Cases referred to

Aw Ngoh Leang v Inspector General of Police & Ors [1993] 1 MLJ 65 (folld)
Kumaran Suppiah v Dato' Noh bin Haji Omar & Anor [2006] 6 MLJ 393 (refd)
Lim Siong v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors
 Permohonan Jenayah No 44–55 Tahun 2007 (folld)
Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1991] 3 MLJ 28 (folld)

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Legislation referred to

Dangerous Drugs (Special Preventive Measures) Act 1985 s 6
 Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 r 3, 3(1)
 Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1)
Suresh Thanabalasingam (Kuldip & Co) for the applicant.
Tengku Amir bin Zaki (Deputy Public Prosecutor, Attorney General's Chambers) for the respondents.

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Nallini Pathmanathan JC:

INTRODUCTION

[1] Ramakrishnan a/l Nagasamy ('the detainee') was made the subject of a detention order dated 6 August 2006 ('the detention order') by the Minister charged with the responsibility for internal security ('the Minister') who acted pursuant to the powers granted to him under s 6 of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). In the application before

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- A this court, the detainee seeks an order of habeas corpus on the grounds that certain procedural requirements have been breached, which entitles him to be freed. The procedural irregularities of which the detainee complains are as follows:
- B (i) A breach of r 3(1) of the Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules 1987 ('the Rules') in that there is doubt created as to whether the detainee was provided at the time of the service of the detention order with copies of Form I by the police officer serving the detention order;
- C (ii) A breach of s 6(1) of the Act in that the Minister has failed to comply with a mandatory procedural requirement in that section requiring the Minister to specify the date when he was 'satisfied' that in the interests of public order, the detainee should be detained; this contention envisages a construction of s 6(1) which imposes such a duty upon the
- D Minister. Such a construction is in issue; In the event such a mandatory procedural requirement is to be found to comprise a constituent part of s 6(1) of the Act, that any 'delay' between the date of receipt of the requisite reports or the date of issuance of the order and the date of the Minister's 'satisfaction' be duly explained, in keeping with the reasoning
- E adopted by the Federal Court in *Kumaran Suppiah v Dato' Noh bin Haji Omar & Anor* [2006] 6 MLJ 393.

Was there a breach of r 3(1) of the Rules?

- F [2] Rule 3(1) provides as follows:
- Where any person is served with a detention order, the police officer serving the detention order shall at the same time —
- G a inform that person of his right to make representations against the detention, order; and
- b provide him with three copies of Form I prescribed in the Schedule and obtain from him an acknowledgement of the receipt thereof.

H SALIENT FACTS

- I [3] The detainee was first arrested and detained by the police on 8 June 2006. He was held in remand at the police station in Putrajaya for close to sixty days, and on 6 August 2008, served with a detention order dated 6 August 2008, issued by the Deputy Minister of Internal Security under the Act. In accordance with s 6(1) of the Act, the Minister had received a complete report of the investigation from one Chief Inspector Amiruddin bin Masri, the police officer making the investigation pertaining to the detainee

(‘Amiruddin’) on 18 July 2006 as well as the report of the Inquiry Officer, one Mohamed Faizal bin Mohamed Fedder on 2 August 2006.

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[4] The issue of relevance in this application is that of the service of Form I, which is the document entitling the detainee to specify in writing that he wishes to make representations in connection with the detention order. As stated above in r 3(1), there is express provision in the rules that Form I is to be served at the same time as the detention order by the police officer serving the detention order.

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[5] The police officer serving the detention order in this case was Amiruddin. He affirmed in his affidavit dated 13 July 2007, that he served the detention order, the grounds and facts on which the detention order was based (‘the grounds’), as well as Form I on the detainee on 6 August 2006. He states that the contents of the detention order and the grounds were first translated and explained to the detainee in the Tamil language to ensure that he fully understood the same.

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THE DETENTION ORDER AND FORM I

[6] The detention order itself comprises two pages of a preprinted standard form document where the terms of the order of detention are inserted or typed in on the first page. On the second page of the detention order it is specified in preprinted format that three sets of documents, namely the detention order itself, the grounds and three copies of Form I were served on dates which were inserted or typed in as *6 August 2006*. Similarly the name of the police officer serving those documents, Amiruddin, is also typed onto the preprinted form comprising the detention order. This form also provides for acknowledgement of service of the detention order, the grounds and three copies of Form I in standard form print. Page 2 of the detention order discloses that service of these three sets of documents has been complied with. The signatures of Amiruddin, the translator, one Detective Sergeant Sitaram a/l Sellappan (‘Sitaram’) and the detainee himself are evident on p 2 of the preprinted detention order. The detention order itself as described is exhibited to Amiruddin’s affidavit of 13 July 2007 as exh ‘NRPN-1’. The grounds are exhibited as ‘NRPN-2’. *However, no copy of the Form I, of which three sets are stated to have been served on the detainee on 6 August 2006, is exhibited in C/I Amiruddin’s affidavit.* Prima facie, on the basis of the affidavits of Amiruddin, Sitaram and the detention order, NRPN-1, it would appear that there has been compliance with r 3(1).

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SERVICE OF FORM I AT SIMPANG RENGGAM

[7] Subsequently on 17 July 2007, one Nik Mohamad Faidza bin Nik

- A Jaafar, the officer in charge of the detention centre in Simpang Renggam, ('Nik Faizda') affirmed an affidavit stating that he served three copies of Form I on the detainee on 7 August 2006, the date when the detainee was brought to the detention centre. He states that he first explained the contents of Form I to the detainee in Bahasa Malaysia that was easily understood and
- B then took the additional precaution of having one Harun bin Musa to translate once again, inter alia, the contents of Form I to him. Nik Faizda goes on to state that the detainee was only ready to fill in and sign Form I on 15 August 2006, which the detainee did in the presence and with the assistance of Harun bin Musa. The detainee then, according to Nik Faizda's
- C affidavit, returned two filled copies of Form I, one of which was sent to the Advisory Board by post on the same day. A copy of the Form I is exhibited as 'ZMD-1' to the affidavit of Zakiah bt Md Din, the Secretary to the Advisory Board. It is apparent that 'ZMD-1' is the Form I that was served on the detainee at the detention centre, as the name of the translator, Harun
- D Musa is clearly set out on p 2 with his signature.

Is it clear that Form I was served by the police officer serving the detention order, Amiruddin as required by r 3?

- E [8] Based on the aforesaid facts, the detainee contends that doubt arises as to whether he was in fact served with three copies of Form I by the police officer serving the detention order, ie Amiruddin, as specified by Rule 3. In response, the respondents maintain that by virtue of the acknowledgement on
- F p 2 of the detention order, it is evident that three copies of Form I were served on 6 August 2006 at the same time as the detention order and the grounds, as specified by r 3.

- G [9] Upon a perusal of the affidavits of Amiruddin and Sitaram, as well as the affidavits of Nik Faizda and Harun bin Musa, it is evident that both the police officer and the officer in charge of the detention centre have affirmed to the fact of having served three copies of Form I on the detainee at different times. No copy of the Form I stated to have been served by the police officer Amiruddin however has been exhibited. Only the copy served by the officer
- H in charge of the detention centre, Nik Faizda has been exhibited. While it is not a procedural requirement that a copy of the Form I served on the detainee be exhibited, the facts of the instant case are such that service of Form I has clearly been shown to have been effected at the Simpang Renggam Detention Centre by Nik Faizda, the officer in charge of the detention centre. And it is
- I this copy that reached the Advisory Board. It is not clear what happened to the three sets of Form I that were said to have been served on the detainee by Amiruddin on 6 August 2006.

[10] Notwithstanding these two sets of facts which have been deposed to by two different deponents, no explanation has been put forward by these deponents or the respondents to explain if indeed three sets of Form I were served twice, or to state or ascertain what happened to the three copies of the Form I said to have been served on the detainee by the police officer serving the detention order on 6 August 2006.

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[11] As such, the possibilities that arise are as follows:

(a) was the detainee indeed served with three copies of Form I on 6 August 2006? or

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(b) was the detainee served twice?

[12] The respondents have contended on the other hand that it is clear from the aforesaid affidavits that Form I has been served twice and as such, there has been full compliance with r 3. It would be necessary for the court to make an assumption from the contents of the affidavits of Amiruddin and Sitaram as well as Nik Faidza and Harun bin Musa that service of three sets of Form I was effected twice.

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[13] This is because none of the respondents has clarified or stipulated by way of a clear averment that service was in fact effected twice. And if service was effected twice, none of the respondents has provided an explanation for the same. Instead, the affidavits by the two sets of deponents above, the absence of any explanation or exhibit in relation to the service of the first set of three copies of Form I, coupled with clear evidence of service of a 'second' set of three copies of Form I, suggests that while Form I was certainly served by the officer in charge of the detention centre, it is not clear beyond doubt that three copies of Form I were served by the police officer with the detention order and the grounds on 6 August 2006.

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[14] The effect of the acknowledgement of service of three copies of Form I contained in the detention order is somewhat weakened by the fact that it is in standard preprinted form in the detention order. While such an acknowledgement would normally suffice, in the instant case, its prima facie effect of regular service in compliance with r 3 is displaced by the unexplained subsequent and full service of three sets of Form I by the officer of the detention centre, coupled with the absence of any other exhibit showing the actual service of Form I by the police officer serving the detention order or an explanation by the two deponents as to whether and if so, why Form I was served twice in this case.

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[15] In summary, upon a consideration of the entirety of the evidence before this court, it is not entirely without doubt whether the police officer

- A Amiruddin did in fact effect service of three copies of Form I on the detainee together with the detention order and grounds on 6 August 2006. In view of this doubt, it cannot be stated with any degree of certainty that there has been full compliance with r 3(1) of the Rules. A lack of compliance with r 3 denotes non-compliance with a mandatory procedural requirement, which in turn has the effect of vitiating the order for detention even if no real prejudice has ensued to the detainee.

- [16] In *Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1991] 3 MLJ 28 Edgar Joseph Jr J (as he then was) ruled:

- C ... It matters not one whit that the detainee did in fact make representations to the Advisory Board which considered the same and made recommendations thereon which led to the detainee's detention. In other words, once a breach of a mandatory statutory requirement is established, the fact that the detainee was not prejudiced is irrelevant...

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- [17] His Lordship concluded that a failure to comply with the strict procedural requirements of service of Form I amounted to a breach of a mandatory procedural provision, as opposed to a directory provision. And in *Aw Ngoh Leang v Inspector General of Police & Ors* [1993] 1 MLJ 65, the Supreme Court held as follows:

- E Any disobedience of the mandatory requirements for the protection of this right [Rule 3] would vitiate any order of detention made even if no real prejudice has ensued to the detainee ...

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- [18] It therefore follows that the detainee succeeds in his application for habeas corpus which is therefore granted.

- G *Has a breach of s 6(1) of the Act been occasioned by the Minister's failure or omission to set out the date when he was 'satisfied' that the detainee should be detained?*

- H [19] Although the detainee has succeeded in his first ground he has also raised a further ground, namely a breach of s 6(1) of the Act. The said section provides in full as follows:

- I (1) Whenever the Minister, after considering —
(a) the complete report of investigation submitted under subsection (3) of section 3; and

(b) the report of the Inquiry Officer submitted under subsection (4) of section 5,

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is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, *the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order ('detention order') direct that such person be detained for a period not exceeding two years.*

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[20] The section in its entirety provides that at any time after having considered the investigation report submitted by the police officer and the inquiry officer and being satisfied that a person is involved in an activity relating to the trafficking of dangerous drugs, the Minister may by order direct that the person be detained for two years 'if', ie provided the Minister is satisfied that it is in the interest of public order to do so.

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[21] From submissions of counsel for the detainee it appears that the detainee's complaint is aimed at the failure of the Minister to specify the 'date of his satisfaction' in respect of the latter part of s 6(1), rather than the first part of s 6(1) which also requires the Minister's satisfaction in respect of the reports from the police officer investigating the matter and the inquiry officer.

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[22] The detainee's complaint is that a reading of the Deputy Minister's affidavit shows that he received the report from the investigation officer on 18 July 2006 and the inquiry officer on 2 August 2006. The detention order is dated 6 August 2006. On the assumption that the date of satisfaction is the date of the order, it is then contended that there is a delay of four days from 2 August 2006 to 6 August 2006 which the Minister has to explain. Alternatively it is contended that if the date of satisfaction is not the date of the issuance of the order, then the Minister is bound to expressly stipulate the date of his 'satisfaction' and explain any ensuing delay.

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[23] The basis for these contentions follow from the reasoning of the Federal Court in *Kumaran Suppiah v Dato' Noh bin Haji Omar & Anor* [2006] 6 MLJ 393 which stipulates in relation to s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969, that there should be no delay between the date of issuance of a detention order and the date when the detention order takes effect. This in turn is because it is a mandatory procedural constituent of the section that the Minister should act expeditiously where no specific time frame is specified. If no time is specified then the provisions of the Interpretation Act require the Minister to act with all requisite speed. Accordingly a delay between the date of issuance of the order and the date when the order is to take effect must be explained.

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A [24] This contention has been considered in full in *Lim Siong v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors* Permohonan Jenayah No 44–55 Tahun 2007, (*Lim Siong's* case) in the context of s 4(1) of the Emergency (Public Order and Prevention of Crime Ordinance 1969) which is similar to the latter limb of s 6(1) of the Act. I adopt wholly the decision
B and grounds in that case here.

[25] The essence of the decision in *Lim Siong's* case as applied to the instant case is that the second part or latter limb of s 6(1) of the Act, provides a condition precedent to the exercise of discretion by the Minister in deciding
C whether or not to make a detention order. In other words it provides that the Minister may direct by order that a person be detained but only if he is satisfied that it is in the interest of public order that such person be detained. The words '... if he is satisfied that it is necessary in the interest of public order that such person be detained' circumscribe the conditions under which
D he can make such a detention order. The two are inseparable because the requirement of 'satisfaction' is the basis for the detention order. If this proviso or condition precedent is not met, then no detention order can be made. Accordingly the date of 'satisfaction' of the Minister is the date of issuance of the detention order.
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[26] In other words it is only if the satisfaction of the Minister arose at a point of time other than the date when he issued the order, that a gap would arise. As the date of satisfaction is a part of the issuance of the order, in that
F it merely prescribes a condition precedent, rather than setting out a separate step to be taken by the Minister, there is no such gap in time.

[27] It therefore follows that there is no requirement that the Minister set out or specify the date when he was 'satisfied' because it is the date of the
G detention order. It would therefore follow that there was a gap of some four days between the day when the Minister received the report from the inquiry officer on 2 August 2006 and the issuance of the order on 6 August 2006. There is no requirement that the Minister must make his decision on whether or not to exercise his discretion immediately upon receiving the relevant
H reports. That would attract the criticism of failing to give any or any adequate consideration to the reports which a crucial part of the basis for his decision.

[28] If the contention is that a perusal of the affidavit suggests that the
I Minister received the reports and read them and was immediately satisfied, this is untenable as the affidavit does not provide so. For these reasons it is apparent that there is no breach of s 6(1) of the Act and this ground fails.

[29] However on the basis of a breach of the procedural requirements of r 3 of the Rules, this application for habeas corpus is allowed and the detainee is ordered to be released forthwith.

Application allowed.

Reported by Andrew Christopher Simon

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